

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

AMY LYNN HENDERSON

**09-82159
CHAPTER 7**

ORDER GRANTING RELIEF FROM AUTOMATIC STAY

THIS CAUSE coming on to be heard on September 22, 2011, before the Honorable William L. Stocks, United States Bankruptcy Judge for the Middle District of North Carolina, upon the request to lift the Automatic Stay and to allow foreclosure on the Debtor's real property at 2713 Omah St, Durham, NC 27705, which Deed of Trust is recorded in the Register of Deeds Office of Durham County, North Carolina and held by American Home Mortgage Servicing, Inc. Appearing at the hearing were Kimberly A. Sheek, attorney for American Home Mortgage Servicing, Inc. and Koury Hicks attorney for the Debtor.

AND, IT APPEARING to the Court, and the Court **FINDING** that adequate notice of the Motion for Relief from Stay was given to the appropriate parties as required by the appropriate Bankruptcy Rules. The Motion failed to give adequate notice to the appropriate parties of American Home Mortgage Servicing, Inc.'s requests that the Chapter 13 Trustee be required to disburse the \$19,762.00 funds that are on hand to American Home Mortgage Servicing, Inc. A hearing was held to consider the issues raised by Movant's Motion; that the Debtor is in default in payments on the said real estate mortgage; that there is no equity in the property from which the estate could be benefited; and, but for the Automatic Stay provided by Title 11 U.S.C., Sections 362 et. seq., Movant would be entitled to foreclose on the real property subject to the aforesaid Deed of Trust under the power of sale contained therein, or by judicial process.

WHEREFORE, based upon the foregoing Findings of Fact, **THE COURT CONCLUDES AS A MATTER OF LAW**, that good cause has been shown, and that an Order should be entered granting relief from the Automatic Stay; and, Movant should be permitted to repossess or exercise the Power of Sale pursuant to the Deed of Trust to sell the property free and clear of any interest of the Debtor and the Standing Trustee.

NOW THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** that Movant, American Home Mortgage Servicing, Inc., is granted relief from the Automatic Stay provided by Title 11 U.S.C., Sections 362 et seq.; and, the **NOTEHOLDER** or a duly appointed **SUBSTITUTE TRUSTEE** be allowed to repossess or exercise the Power of Sale granted under the Deed of Trust referred to above. American Home Mortgage Servicing, Inc. shall have a period of 10 days from the day of the hearing to file a Motion for Adequate Protection. The Chapter 13 Trustee shall not disburse any funds on hand until a hearing is held on American Home Mortgage Servicing, Inc.'s Motion for Adequate Protection.

IT IS FURTHER ORDERED that Rule 4001(a)(3) of the Bankruptcy Code is not applicable and American Home Mortgage Servicing, Inc. may immediately enforce and implement this Order granting relief from the automatic stay. The Movant shall have 180 days from the date of this Order to file a deficiency claim in the offices of the Chapter 13 Trustee.

IT IS FURTHER ORDERED that if a sale is held and excess proceeds are derived, then the proceeds shall be deposited with the Chapter 7 Trustee in this proceeding.

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CERTIFICATE OF SERVICE

The Order Granting Relief has been served upon the following parties:

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